

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

**MARITIME COMMUNICATIONS/LAND)
MOBILE, LLC)**

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

Participant in Auction No. 61 and Licensee of)
Various Authorizations in the Wireless Radio)
Services)

Application File Nos. 0004030479,
0004144435, 0004193028,
0004193328, 0004354053,
0004309872, 0004310060,
0004314903, 0004315013,
0004430505, 0004417199,
0004419431, 0004422320,
0004422329, 0004507921,
0004153701, 0004526264,
0004636537, and 0004604962

Applicant with **ENCANA OIL AND GAS (USA),)
INC.; DUQUESNE LIGHT COMPANY; DCP)
MIDSTREAM, LP; JACKSON COUNTY)
RURAL MEMBERSHIP ELECTRIC)
COOPERATIVE; PUGET SOUND ENERGY,)
INC.; ENBRIDGE ENERGY COMPANY, INC.;)
INTERSTATE POWER AND LIGHT)
COMPANY; WISCONSIN POWER AND)
LIGHT COMPANY; DIXIE ELECTRIC)
MEMBERSHIP CORPORATION, INC.;)
ATLAS PIPELINE – MID CONTINENT, LLC)
DENTON COUNTY ELECTRIC)
COOPERATIVE, INC., DBA COSERV)
ELECTRIC; AND SOUTHERN CALIFORNIA)
REGIONAL RAIL AUTHORITY)**

For Commission Consent to the Assignment of)
Various Authorizations in the Wireless Radio)
Services)

FILED/ACCEPTED

JUL 14 2011

Federal Communications Commission
Office of the Secretary

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

**OPPOSITION TO MOTION PROPOSING PROCEDURES FOR PARTICIPATION OF THE
PETITIONER PARTIES**

Submitted by:

Warren C. Havens, Environmental, LLC,
Intelligent Transportation and Monitoring
Wireless, LLC, Skybridge Spectrum
Foundation, Telesaurus Holdings GB, LLC,
Verde Systems, LLC, and V2G LLC

July 14, 2011

No. of Copies rec'd
List A B C D E

0+6

Table of Contents

I.	SKYTEL WAS DESIGNATED A FULL PARTY TO THIS PROCEEDING WITHOUT LIMITATION.	2
II.	CONCERNS OVER DUPLICATIVE OR UNREASONABLE DISCOVERY ARE SPECULATIVE AND READILY REMEDIED.	5
	A. The Presiding Judge Should Reject Maritime’s Specific Proposals for Limiting SkyTel’s Rights During the Hearing.	6
	B. The Presiding Judge Should Reject the Applicants’ Specific Proposals for Limiting SkyTel’s Rights During the Hearing.	9
III.	SKYTEL’S PARTICIPATION CANNOT LOGICALLY OR FAIRLY BE CONFINED TO ANY SINGLE ISSUE.	12
IV.	CONCLUSION.	13

Summary

SkyTel hereby opposes Maritime's Motion seeking to limit SkyTel's participation in this hearing, as well as the proposals set forth by the Applicants in their Comments with respect to the Maritime Motion. The Commission designated SkyTel a party to this proceeding and neither Maritime nor the Applicants provides a valid legal or equitable basis for limiting SkyTel's participation or otherwise restricting its ability to protect its interests and vindicate its rights.

The primary consideration cited by both Maritime and the Applicants in favor of tight restrictions is the avoidance of potentially unreasonably duplicative, or abusive, discovery initiated by SkyTel. SkyTel repeatedly has stated that it is willing to work cooperatively with the Enforcement Bureau to avoid duplicative discovery and minimize the burden on other parties to the extent reasonable and practical. Maritime and the Applicants can seek relief in the event that SkyTel's discovery requests are duplicative of discovery requests that have already been presented by the Enforcement Bureau or they are considered by any party to be otherwise abusive. It is, however, both highly unusual and troubling that Maritime and the Applicants seek to restrict SkyTel's ability to protect its own rights and interests merely for their own administrative convenience based on speculative concerns.

Maritime and the Applicants also press for a conclusion that SkyTel's participation should somehow be limited to a single issue of the ten issues designated for hearing – namely whether the assignment of license applications that are among the subjects of the hearing can be granted in light of conclusions reached with respect to the other issues designated for hearing. First, SkyTel has legal standing and equitable rights to pursue in this proceeding all of the other designated issues. Second, regarding said single issue, SkyTel respectfully suggests that there is no practical or fair way to cabin off SkyTel's participation in this regard, as SkyTel cannot

effectively present its case with respect to the question of the assignments, which is primarily if not exclusively a legal issue, without having the opportunity to present evidence and argument regarding the facts that would support an appropriate legal conclusion. The suggestion that SkyTel can or should somehow defer to the Enforcement Bureau as the sole party allowed to present evidence, seek discovery or argue its case is baseless and unreasonable. It would effectively strip SkyTel of its rights and party status merely for some purported by unproven ease of administration in the hearing. That is an unreasonable proposal that ignores the Commission's direction on SkyTel's party status, and SkyTel respectfully urges the Presiding Judge to reject it.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio	)	Application File Nos. 0004030479,
Services	)	0004144435, 0004193028,
	)	0004193328, 0004354053,
Applicant with ENCANA OIL AND GAS (USA),	)	0004309872, 0004310060,
INC.; DUQUESNE LIGHT COMPANY; DCP	)	0004314903, 0004315013,
MIDSTREAM, LP; JACKSON COUNTY	)	0004430505, 0004417199,
RURAL MEMBERSHIP ELECTRIC	)	0004419431, 0004422320,
COOPERATIVE; PUGET SOUND ENERGY,	)	0004422329, 0004507921,
INC.; ENBRIDGE ENERGY COMPANY, INC.;	)	0004153701, 0004526264,
INTERSTATE POWER AND LIGHT	)	0004636537, and 0004604962
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE – MID CONTINENT, LLC)	
DENTON COUNTY ELECTRIC)	
COOPERATIVE, INC., DBA COSERV -)	
ELECTRIC; AND SOUTHERN CALIFORNIA)	
REGIONAL RAIL AUTHORITY)	
)	
For Commission Consent to the Assignment of)	
Various Authorizations in the Wireless Radio)	
Services)	

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

**OPPOSITION TO MOTION PROPOSING PROCEDURES FOR PARTICIPATION OF THE
PETITIONER PARTIES**

Warren C. Havens, Environmental, LLC, Intelligent Transportation and Monitoring
Wireless, LLC, Skybridge Spectrum Foundation, Telesaurus Holdings GB, LLC, Verde Systems,
LLC, and V2G LLC (collectively, “SkyTel”), by their attorneys, hereby oppose the Motion

Proposing Procedures for Participation of the Petitioner Parties submitted by Maritime Communications/Land Mobile, LLC (“Maritime”) on June 29, 2011 in the above-captioned proceeding (the “Maritime Motion”).¹ Pursuant to the direction of the Presiding Judge, on July 8, 2011, Dixie Electric Membership Corporation, Inc., Atlas Pipeline Mid-Continent LLC; DCP Midstream, LP; Enbridge Energy Company, Inc., EnCana Oil & Gas (USA) Inc.; Jackson County Rural Electric Membership Cooperative, Denton County Electric Cooperative, Inc., dba CoServ Electric, Interstate Power and Light Company, Wisconsin Power and Light Company, Southern California Regional Rail Authority and Duquesne Light Company (collectively, “Applicants”) submitted Comments on Maritime’s Motion (“Applicant Comments”). Each of Maritime and the Applicants seek almost total restriction on SkyTel’s activities within the hearing process. Notably, they cite no legal basis for attempting to limit SkyTel’s participation in this proceeding, and the sole reason Maritime and the Applicants offer for limiting SkyTel’s participation are wholly speculative and readily subject to remedy.

I. SKYTEL WAS DESIGNATED A FULL PARTY TO THIS PROCEEDING WITHOUT LIMITATION.

Neither Maritime nor the Applicants can contest the fact that SkyTel was made party to this proceeding by the Commission, and SkyTel’s participation is not optional.² The Commission designated SkyTel as a party to the hearing without limitation or constraint of any

¹ As previously indicated, SkyTel has pending before the Commission an application for review of the denial of SkyTel’s petition for reconsideration of the denial of its petition to deny Maritime Communications/Land Mobile, LLC’s long-form application for grant of licenses in Auction No. 61 (the “Maritime Licenses”), as well as a petition for reconsideration based on new facts. SkyTel’s participation in this proceeding is without prejudice to SkyTel’s right and ability to advance its positions in these other proceedings currently pending before the Commission.

² To the extent Maritime’s Motion and the Applicant Comments represent petitions for reconsideration of the Hearing Designation Order in this proceeding, they are untimely, not properly before the Commission, cannot be granted by the Presiding Judge, and should be dismissed without further consideration.

sort.³ SkyTel timely filed petitions to deny (and subsequent pleadings, in proceedings still pending) the Maritime long form in Auction 61 resulting in the subject licenses, as well as petitions to deny each of the above-captioned assignment of license applications, which the Commission has now designated for hearing. SkyTel's interests in its petitions to deny proceedings, which are full-party interests, necessarily carries over into this proceeding. Further, given that SkyTel was the party that originally brought most of the relevant facts included in the Hearing Designation Order to the Commission's attention, SkyTel is uniquely suited to be a party in this hearing. Given the facts, SkyTel respectfully submits that the Presiding Judge lacks the authority to limit SkyTel's participation in this hearing absent contemptuous, dishonest or disruptive conduct that SkyTel has not displayed.

Tellingly, neither Maritime nor the Applicants cites any relevant legal authority for the proposition that the Presiding Judge is authorized to limit the rights or participation of a party the Commission itself has designated as a party to a hearing proceeding, nor can they. Maritime's best effort to provide some legal basis upon which the Presiding Judge might limit SkyTel's participation is to cite to the broadly generic authority afforded the Presiding Judge to "[r]egulate the course of the hearing, maintain decorum, and exclude from the hearing any person engaging in contemptuous conduct or otherwise disrupting the proceedings," and to "[d]ispose of procedural request or similar matters," including "the proper use of [discovery] procedures."⁴ This general provision is hardly a license for prior-restraint on a speculative basis that would

³ Maritime Communications/Land Mobile, LLC, *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, EB Docket No. 11-71, FCC 11-64 (April 19, 2001) ("Hearing Designation Order").

⁴ Maritime Motion at 5-6, citing 47 C.F.R. §§ 1.243(f), 1.243(i), and 1.311(c)(3).

trample upon the terms of the Commission's Hearing Designation Order, and potentially cause irreparable harm to SkyTel's rights.

Where a Presiding Judge has relied on this authority to exclude the participation of a given party, that decision has been based on ongoing, repeated and abusive activities that disrupt an orderly proceeding, or on a blatant lack of candor or willful defiance, not on the convenience of another party.⁵ At this early stage in the proceeding, with discovery having just opened on July 5, there is no plausible basis to argue that SkyTel's participation in this hearing will prove to be "contemptuous" or "disruptive" in a manner that could even potentially justify limiting SkyTel's participation. Further, any reasonable reading of the Judge's authority to "[r]egulate the course of the hearing [and] maintain decorum" suggests that such authority should not be exercised to prevent a party, designated by the Commission itself as a party to a hearing proceeding, from vindicating its rights in this proceeding absent some compelling justification. Notwithstanding Maritime's vain attempt to provide some legal basis for limiting SkyTel's

⁵ See, e.g., Application of Nancy Naleskiewicz for a Construction Permit to Establish a New Cellular System to Operate on Frequency Block A in the Domestic Public Cellular Telecommunications Radio Service to serve the Kansas – 3 (Jewell) Rural Service Area, *Memorandum Opinion and Order*, 6 FCC Rcd 4829, ¶¶ 21-24 (1991) (excluding party based on lack of candor so blatant as to constitute contempt); Applications of Lorrain Walker Arms, PZ Entertainment Partnership, L.P., Media Profiles, Inc., Tierra Alta Broadcasting, Inc., Echonet Corporation, for Construction Permit for a New Television Station on Channel 15, Las Vegas, Nevada, *Memorandum Opinion and Order*, 5 FCC Rcd 7013, ¶ 4 (1990) (excluding party based on "not merely dilatory noncompliance with procedural deadlines, but will defiance of the ALJ's lawful order"); Application of Independent Music Broadcasters, Inc., Radio Station WYOR, Coral Gables, Florida for License to Cover Construction Permit, *Memorandum Opinion and Order*, 68 F.C.C.2d 1412, ¶ 23 (1978) (a party refusing to submit an appropriate affidavit regarding his participation in related matters while he was a Commission employee would, in effect, be committing an act of contempt by refusing to comply); Application of KAYE Broadcasters, Inc. for Renewal of License of Station KUPY, Puyallup, Wash., *Memorandum Opinion and Order*, 49 F.C.C.2d 809, ¶ 4 (1974) (not abuse of discretion to exclude counsel from the hearing room where there was ample support that exclusion was required to maintain decorum, including consistently refusing to abide by orders, always having to have the last word

participation, SkyTel's rights in this proceeding cannot be viewed as a mere "procedural" matter. Finally, as discussed in greater detail below, any concerns that SkyTel's participation will lead to duplicative or abusive discovery are speculative at this point, and, in any event, subject to ready answer and appropriate relief to the extent they might actually materialize.⁶

II. CONCERNS OVER DUPLICATIVE OR UNREASONABLE DISCOVERY ARE SPECULATIVE AND READILY REMEDIED.

Beyond the lack of legal authority they provide, Maritime and the Applicants offer little in the way of any practical reason to limit SkyTel's participation in this matter. The only justification Maritime provides is that "giving" SkyTel "unrestricted procedural rights throughout all aspects of the hearing, would run the risk of duplicating the actions of the Enforcement Bureau and unduly complicating the hearing by unnecessarily [or unduly] increasing the time, personnel, and resources (both government and private) expended."⁷ Similarly, the Applicant Comments are focused almost entirely on discovery-related concerns.

In both cases, these concerns are premature. To constrain SkyTel's rights in this proceeding based on mere speculation concerning some potential future attempted abuse of the discovery process is unreasonable, unnecessary, and highly prejudicial to SkyTel. SkyTel has not yet served discovery requests on either Maritime or the Applicants. As SkyTel, through

in any exchange, and continuously engaging in a course of disrespectful, provocative, and contemptuous conduct.")

⁶ If the motive behind any proposal to limit SkyTel's participation is administrative efficiency, SkyTel respectfully submits that goal is best served by allowing SkyTel to participate fully in this proceeding. As SkyTel has previously indicated, SkyTel is participating without prejudice to its rights to prosecute the issues in this proceeding, and related issues, in other forums. If SkyTel's participation rights in this hearing is limited, that will only compel SkyTel to seek relief in other forums, which could create substantial inefficiencies for all of the other parties involved, and the Commission.

⁷ Maritime Motion at 3.

counsel, stated in the pre-hearing conference, as well as in its Amendment to Request for Admissions submitted on June 29, 2011, SkyTel is willing to work cooperatively with the Enforcement Bureau to ensure that its discovery requests do not unduly duplicate discovery initiated by the Bureau. SkyTel has no interest in wasting its own resources by duplicating discovery initiated by the Enforcement Bureau. In any event, if SkyTel's discovery requests, when they are actually presented, are duplicative or unreasonable, Maritime and the Applicants will have the opportunity under the Commission's rules to seek relief at that time. Attempting to preemptively limit SkyTel's rights in this proceeding based on wholly speculative concerns regarding discovery that has not yet even been initiated, however, is plainly unnecessary and inappropriate. Deciding as a threshold matter that SkyTel has, effectively, nothing to add to the fact finding in this proceeding ignores the fact that SkyTel initially pursued, for years, the issue of Maritime's basic qualifications to be a licensee. The notion that SkyTel now has nothing to add to the process is simply wrong.

A. The Presiding Judge Should Reject Maritime's Specific Proposals for Limiting SkyTel's Rights During the Hearing.

SkyTel objects to the particular procedures Maritime proposes. In particular, while SkyTel will make every reasonable effort to avoid duplication, and is willing to work cooperatively with the Enforcement Bureau to avoid duplication of discovery requests, SkyTel should not be required to seek permission from the Bureau regarding SkyTel's interrogatories or document requests, and should not be confined to some wholly artificial time constraint for submitting "supplemental" discovery requests within seven calendar days of service by the Enforcement Bureau of discovery requests. SkyTel has no incentive to submit duplicative requests. In the event Maritime feels that SkyTel has submitted duplicative requests, Maritime (and/or the Applicants, as discussed below) may object to those requests and seek appropriate

relief from the Presiding Judge. In the event SkyTel's discovery requests are non-duplicative, Maritime has no reasonable basis to object to them.⁸

With respect to depositions, SkyTel has no objection to coordinating with the Enforcement Bureau, as well as any witness, to select a mutually agreed-upon date, and to agree upon an order of examination during any deposition, and an approximate division of time required by each party. SkyTel certainly agrees as a general principal that it would be more convenient to mutually agree to joint depositions, so that "any particular witness need not appear at multiple depositions noticed by different parties."⁹ Ultimately, however, all parties must be permitted to conduct reasonable and appropriate depositions without undue constraint by another party's intention to notice the same witness for deposition.

Maritime's proposals that only the Enforcement Bureau and Maritime should exchange direct case exhibits, that only the Enforcement Bureau should be allowed to participate fully in the actual hearing, and that SkyTel should not be permitted to submit proposed findings of fact and conclusions of law are unsupported by any legal or policy argument and are unfair.¹⁰ To the

⁸ Maritime's vision of a "consolidated response date" that would apply to both Enforcement Bureau and SkyTel discovery requests is simply unrealistic. The discovery period in this proceeding will last for approximately six months. It is quite possible that the Enforcement Bureau and/or SkyTel may submit multiple sets of interrogatories and document requests, making the concept of a "consolidated response" illusory. Of course, Maritime can minimize the potential burden of complying with discovery requests by complying with those requests in the first instance, to avoid forcing the Enforcement Bureau or SkyTel to submit motions to compel production. SkyTel is not optimistic that Maritime will be so cooperative, however, given that the Enforcement Bureau recently was forced to submit a Motion to Compel following Maritime's evasive, indirect and incomplete responses to the Enforcement Bureau's Requests for Admissions, and given Maritime's historic recalcitrance with respect to providing requested information, as detailed in the Hearing Designation Order.

⁹ Maritime Motion at 4.

¹⁰ Maritime has maintained in other proceedings that SkyTel's claims should be referred to the FCC under the primary jurisdiction doctrine, because those claims are better left to the FCC and the FCC has particular expertise on the relevant issues. *See* Brief in Support of Omnibus Motion

extent Maritime has some unexpressed concern that it would be unduly burdensome for Maritime to respond to two different parties in this proceeding, this concern is insubstantial and certainly no basis for the Presiding Judge to adopt such draconian measures as those urged by Maritime. If SkyTel and the Enforcement Bureau present largely duplicative cases, there will essentially be no additional burden placed on Maritime. If SkyTel and the Enforcement Bureau do not present duplicative cases, that will be because SkyTel and the Enforcement Bureau are presenting different facts, evidence or arguments, and neither one should be cast aside solely for Maritime's convenience.

In fact, while there may be significant overlap between the cases they will present, the interests of the Enforcement Bureau and SkyTel are not perfectly aligned in this matter. By way of example, the Enforcement Bureau supported the request of Southern California Regional Rail Authority ("SCRRA") to be removed from this proceeding – a request that SkyTel strongly opposes. SkyTel timely filed a petition to deny the application that would assign Maritime licenses to SCRRA and SkyTel's petition and its rights in this proceeding with respect to that petition should not be rendered moot by the Enforcement Bureau's position that SCRRA should be separated out from this proceeding.

Further, SkyTel and the Enforcement Bureau may ultimately seek different outcomes in this hearing. For example, the Enforcement Bureau may seek an outcome other than revocation of Maritime's licenses. SkyTel should not be required merely to cross its fingers in this regard and wait to see what the Enforcement Bureau proposes, and SkyTel should not be bound by

to Dismiss on Behalf of Defendants Maritime Communications/Land Mobile, LLC, Mobex Network Services, LLC, Paging Systems, Inc. and Touch Tel Corporation, Civil Action No. 2:11-CV-00993-KSH-PS (March 1, 2011) (D. NJ). Maritime appears to contradict its position that SkyTel is free to pursue its claims at the FCC by attempting to limit SkyTel's participation in the instant proceeding.

tactical or policy decisions the Bureau makes. SkyTel *must* be allowed the opportunity to vindicate its own rights.

Ultimately, this proceeding is a complex one that involves many parties and many issues. It may be understandable that Maritime would prefer the proceeding to be less complex, but there is *no* basis for shunting SkyTel aside or constraining SkyTel's rights merely for administrative ease based on that preference. Both courts and parties are sometimes forced to confront complex cases when there are multiple interests at stake, and it is fundamentally unfair to force one party to be limited to the advocacy of another, theoretically aligned, party solely because that seems easier. Again, SkyTel is willing to cooperate with the Enforcement Bureau to avoid duplicative, abusive or unreasonable discovery requests. SkyTel is not, however, willing to sit on the sidelines and hope for the best.

B. The Presiding Judge Should Reject the Applicants' Specific Proposals for Limiting SkyTel's Rights During the Hearing.

The Applicant Comments largely mirror the Maritime Motion, yet propose even further restrictions on SkyTel's ability to seek discovery of relevant facts or documents by requiring SkyTel to submit proposed discovery requests to the Enforcement Bureau, which will then engage in some sort of "filtering" process.¹¹ Again, the concerns expressed with respect to duplicative or unduly burdensome discovery requests are premature and speculative. Applicants' repeated efforts to preemptively restrict any party's rights to seek relevant information and documents are heavy-handed, speculative and unnecessary at this juncture.

Applicants have already demonstrated a nearly-compulsive resistance to being even potentially subject to discovery in this proceeding. During the pre-hearing conference on June 15, 2011, the Presiding Judge directed the Enforcement Bureau, along with the Applicants, to

¹¹ Applicant Comments at 3.

work together to submit a stipulation regarding the nature and extent of discovery that the Enforcement Bureau may serve on the Applicants in this proceeding. On June 27, 2011, the Enforcement Bureau submitted its Status Report Concerning Discovery (“Bureau Report”) and the Applicants separately submitted a Stipulation Status Report. On June 30, 2011, the Applicants submitted an Amended Stipulation Status Report (“Applicants’ Report”), proposing that the Bureau should simply take the Applicants word that they have no relevant information.

While the stipulation contemplated by either the Bureau or the Applicants would be effective only between those parties, and would thus ordinarily have no effect whatsoever on the nature and extent of discovery that SkyTel might request of the Applicants, SkyTel reiterates its willingness to work cooperatively with the Bureau to avoid duplicative or unreasonable discovery requests. In the interest of efficiency and minimizing the potential burden on the Applicants with respect to discovery in this proceeding, SkyTel will voluntarily agree to observe the limitations the Bureau Report proposes.¹²

In particular, the Bureau Report proposes that the Presiding Judge adopt the numerical limits on the Bureau’s discovery included in Rules 30 and 33 of the Federal Rules of Civil Procedure, which would limit the Bureau’s discovery to ten depositions that do not exceed seven hours each, and 25 interrogatories directed to each party.¹³ SkyTel respectfully submits that it is

¹² SkyTel respectfully urges the Presiding Judge to reject the proposal set forth in the Applicants’ Report. The Applicants essentially propose to curtail dramatically the Bureau’s ability to seek discovery via a blanket denial that the Applicants possess relevant information. It is highly unusual to suggest that legitimate discovery should simply be assumed away by such a generalized assertion. To the extent the Applicants are concerned that discovery will be unnecessarily burdensome in this matter, SkyTel concurs with the Bureau that the Commission’s rules already provide ample protections and recourse for the Applicants, and that the Presiding Judge may take appropriate action to provide relief in the event that discovery is overreaching or excessive.

¹³ Under Federal Rule of Civil Procedure 30, the limit of ten depositions applies to all depositions taken by plaintiffs or defendants. SkyTel’s understanding, then, is that the

unlikely that either the Bureau or SkyTel will need to exceed, or even approach, these limits unless it is determined during the course of discovery that the Applicants in fact have material, significant, and relevant facts, documents or other information that must be produced – in which case, the Applicants have no legitimate reason for resisting discovery. As a result, SkyTel will voluntarily agree to observe these limits with respect to its own discovery. In particular, SkyTel will agree to limit written interrogatories to no more than 25 per Applicant party, and will work with the Bureau cooperatively to attempt to take no more than ten total depositions of up to seven hours each, subject to either party's ability to seek leave to conduct additional depositions if necessary.¹⁴ This process will necessarily involve cooperation between the Bureau and SkyTel. SkyTel would not, by way of example, agree to allow the Bureau to take up six hours and 45 minutes of an allotted seven hour deposition merely because the Bureau requested to proceed first with its own questions. Nevertheless, SkyTel is confident that the Bureau and SkyTel can arrange a fair and reasonable approach to joint depositions that will reduce the likelihood that any particular witness will need to sit for more than one deposition of reasonable length.

The Applicants' posture in this proceeding is perplexing. On the one hand, the Applicants essentially want to take the smallest possible role in this proceeding. On the other

Enforcement Bureau and SkyTel would be limited, in the aggregate, to ten depositions of the Applicant parties absent leave of the Presiding Judge.

¹⁴ See Authors' Commentary on Federal Rule of Civil Procedure 30, citing *Rainola v. Bratton*, 243 F.3d 610, 628 (2d Cir. 2001); *Byrd v. District of Columbia*, 259 F.R.D.1 (D.D.C. 2009) (court will grant leave to take additional depositions to the extent consistent with the protections against cumulative or burdensome discovery in Rule 26(b)(2)). Given the complexity of this proceeding, SkyTel trusts that the Presiding Judge will grant leave liberally in the event discovery reveals that the Applicants have additional relevant information that cannot be uncovered based on the proposed limitations.

hand, they want to be allowed to dictate restrictions on SkyTel's participation.¹⁵ In the end, notwithstanding the Applicants' desire to preempt any discovery against them at all, if the Applicants do not have relevant information, discovery is unlikely to be unduly burdensome as to them. If, on the other hand, the Applicants *do* possess relevant information, it is improper for them to attempt to insulate themselves from discovery merely because they find their participation in this proceeding annoying.

III. SKYTEL'S PARTICIPATION CANNOT LOGICALLY OR FAIRLY BE CONFINED TO ANY SINGLE ISSUE.

Both Maritime and the Applicants seek to buttress their requests to limit SkyTel's participation by asserting that SkyTel's interests in and participation in this hearing can somehow be confined to a single issue, issue (j) in the Hearing Designation Order, namely, "in light of the foregoing issues, whether the captioned applications filed by or on behalf of Maritime Communications/Land Mobile, LLC, should be granted."¹⁶ Both Maritime and Applicants essentially ignore the first half of that formulation, "in light of the foregoing issues," which encompasses every other issue, (a) through (i), designated for hearing in this matter.

SkyTel respectfully submits that, while all parties will have the opportunity to present their legal arguments at an appropriate time, given the precedent of *Jefferson Radio v. FCC*, 340 F.2d 781 (D.C. Cir. 1964), finding that assignment of an authorization need not be considered until it is determined whether that authorization is forfeited, issue (j) fundamentally represents a legal conclusion that can only be fully and successfully argued when facts supporting affirmative

¹⁵ The Applicants filed petitions for reconsideration of the Hearing Designation Order seeking to be removed from the proceeding, which both SkyTel and the Enforcement Bureau opposed. Now, the Applicants, notwithstanding their desire to get out of this proceeding, assert the right to limit SkyTel's participation. The Applicants cannot simply rewrite the Hearing Designation Order to their liking.

¹⁶ Hearing Designation Order at ¶ 62.

conclusions to some or all of issues (a) through (i) in the Hearing Designation Order have been introduced into the record. To assert that SkyTel is free to argue a certain proposed conclusion of law without having had the opportunity to argue, or pursue independent discovery with respect to, any of the underlying issues that would lead to findings of fact supporting that conclusion, is essentially to deprive SkyTel of its rights as a named party to this proceeding. While it may seem superficially appealing and more streamlined to confine SkyTel to arguments surrounding issue (j), SkyTel's interests cannot be isolated from the factual allegations necessary to support a conclusion regarding issue (j). For SkyTel to have the rights as a party to this proceeding that the Commission envisioned in the Hearing Designation Order, SkyTel must be treated equally with the Bureau as a full party.

IV. CONCLUSION.

SkyTel understands the facial appeal of attempting to streamline this proceeding and make it more efficient for the Presiding Judge and all of the parties. To that end, SkyTel will agree to cooperatively work with the Enforcement Bureau to avoid duplicative or unnecessary discovery requests. In any event, the Presiding Judge may take action to remedy any discovery requests that are unduly burdensome. SkyTel should not be required to take a less than full role in this proceeding, and SkyTel's rights with respect to the outcome of this hearing cannot reasonably be curtailed or summarily entrusted to other parties who may have divergent interests.

For the foregoing reasons, SkyTel respectfully requests that the Presiding Judge deny Maritime's Motion, as well as the proposals set forth in the Applicant Comments, and allow SkyTel to proceed in the role the Commission designated SkyTel – as a full participant in this proceeding.

Respectfully Submitted,

Warren C. Havens, Environmental, LLC,
Intelligent Transportation and Monitoring
Wireless, LLC, Skybridge Spectrum
Foundation, Telesaurus Holdings GB, LLC,
Verde Systems, LLC, and V2G LLC

By:


Laura H. Phillips

Howard M. Liberman

Patrick R. McFadden

Drinker Biddle & Reath LLP

1500 K Street, N.W., Suite 1100

Washington, DC 20005-1209

Laura.Phillips@dbr.com

Howard.Liberman@dbr.com

Patrick.McFadden@dbr.com

202-842-8800

202-842-8465/66 (fax)

Their Attorneys

July 14, 2011

CERTIFICATE OF SERVICE

I, Patrick R. McFadden, herby certify that on this 14th day of June, 2011, a true copy of this Opposition was served via first class, postage paid United States Mail upon the following:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, DC 20033

Robert J. Miller, Esquire
Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201

Robert M. Gurss, Esquire
Paul J. Feldman, Esquire
Harry F. Cole, Esquire
Christine Goepp, Esquire
Fletcher, Heald & Hildreth, P.L.C.
1300 N Street, 11th Floor
Arlington, VA 22209

Kurt E. Desoto, Esquire
Joshua S. Turner
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

Dennis C. Brown
8124 Cooke Court, Suite 201
Manassas, VA 20109

Pamela A. Kane, Deputy Chief
Investigations and Hearing Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, DC 20554

Jack Richards, Esquire
Wesley K. Wright, Esquire
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, DC 20001

Albert J. Catalano, Esquire
Matthew J. Plache, Esquire
Catalano & Plache, PLLC
3221 M Street, N.W.
Washington, DC 20007

Charles A. Zdebski, Esquire
Eric J. Schwalb, Esquire
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W.
Washington, DC 20006

Jeffrey L. Sheldon, Esquire
Fish & Richardson, P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005

Sandra DePriest
Maritime Communications/Land Mobile LLC
218 North Lee Street
Suite 318
Alexandria, Virginia 22314


Patrick R. McFadden